

RICHARD T. BOWLES (# 46234)
KENNETH G. JONES (# 196868)
BOWLES & VERNA LLP
2121 N. California Boulevard, Suite 875
Walnut Creek, California 94596
Telephone: (925) 935-3300
Facsimile: (925) 935-0371
Email: rbowles@bowlesverna.com
kjones@bowlesvera.com

Attorneys for Plaintiff
WEBCOR CONSTRUCTION, INC.
dba WEBCOR BUILDERS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

UNITED STATES of AMERICA for the Use and
Benefit of WEBCOR CONSTRUCTION, INC. dba
WEBCOR BUILDERS, and WEBCOR
CONSTRUCTION, INC. dba WEBCOR
BUILDERS,

Plaintiffs,

vs.

DICK/MORGANTI, a joint venture, DICK
CORPORATION, THE MORGANTI GROUP,
AMERICAN CASUALTY COMPANY OF
READING, PA, NATIONAL UNION FIRE
INSURANCE COMPANY OF PITTSBURGH, PA,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: 3:07-CV-02564-CRB

**DECLARATION OF KENNETH G. JONES
IN SUPPORT OF WEBCOR'S
OPPOSITION TO MOTION TO STAY
PROCEEDINGS**

Date: August 24, 2007
Time: 10:00 a.m.
Dept.: Courtroom 8 (19th Floor)
Judge: Hon. Charles R. Breyer

I, KENNETH G. JONES, declare:

1. I am an attorney at law duly licensed to practice before all Courts of the State of California and am a partner at Bowles & Verna LLP, attorneys for plaintiff Webcor Construction Inc, dba Webcor Builders ("Webcor"), in the above action. As such, I have personal knowledge of the facts set forth herein and if called as a witness, could and would competently testify thereto.

2. In 2005, pursuant to the claims procedures set forth in the parties' subcontract, Webcor prepared and submitted to Defendant Dick/Morganti ("DMJV") several change order requests ("CORs"). Webcor submitted COR 60 on July 29, 2005 and submitted CORs 61 through 65 on October

1 31, 2005. DMJV initially forwarded COR 60 to the GSA for consideration but refused to take any
2 action on the remaining CORs 61 through 65.

3 3. About fifteen months after Webcor submitted COR 60, on or about October 27, 2006,
4 DMJV's counsel, Joel Heusinger notified me that the GSA denied responsibility for COR 60.

5 4. Upon receiving notice that the GSA had denied Webcor's COR 60, I demanded that Mr.
6 Heusinger immediately avail DMJV and Webcor of the dispute resolution procedures in both the Prime
7 Contract and Webcor Subcontract and insisted that DMJV immediately seek a Contracting Officer's
8 Decision. This demand was rejected.

9 5. In a letter to Joel Heusinger, dated March 23, 2007, I submitted Jack Harrington's
10 certification of Webcor's COR 60 and made a further demand that DMJV pass the claim through to the
11 GSA and expressly request a Contracting Officer's Decision by no later than April 2, 2007. A true and
12 correct copy of my March 23, 2007 letter is attached hereto as Exhibit "A". DMJV refused to comply
13 with these demands.

14 6. Instead, Mr. Heusinger notified me that DMJV wanted the claim certification language
15 revised. In the spirit of cooperating with DMJV, I submitted a revised certification signed by Jack
16 Harrington to Mr. Heusinger on April 10, 2007. I emphasized the expectation that, "with the revised
17 certification, Webcor's claim will be forwarded to the GSA immediately." This was my third demand
18 to DMJV that it pass the claim to the GSA.

19 7. The next day, on April 11, 2007, Mr. Heusinger again rejected the certification as
20 inadequate. According to Mr. Heusinger, the claim did not contain the certification language required
21 by the Contract Disputes Act.

22 8. I responded to Mr. Heusinger's email that same day. I underscored that the claim
23 certification, as submitted, complied with the FARS and that DMJV's continued refusal to forward it to
24 the GSA was baseless and without merit. I pointed out that several cases have held much less formal
25 wording in a claim certification to be consistent with the FARs. A true and correct copy of the entire
26 email chain is attached hereto as Exhibit "B".

1 9. On April 24, 2007, in another attempt to work with DMJV and resolve this dispute, I
2 offered to modify the claim according to DMJV's specification in exchange for DMJV agreeing to
3 immediately transmit the claim to the GSA. DMJV never responded.

4 10. Having heard no response from DMJV, Webcor had no choice but to commence this
5 action on May 15, 2007 against DMJV and its sureties for breach of contract, a Miller Act claim, and
6 quantum meruit.

7 11. Soon after commencement of this lawsuit, DMJV contacted me to set up a meeting to
8 resolve this dispute. A teleconference occurred on June 11, 2007, and was participated in by John
9 Bowles and myself for Webcor and Joel Heusinger and Michael Ambroso for DMJV. During the
10 teleconference, DMJV, for the first time, agreed to pass up Webcor's claim regarding COR 60 to the
11 GSA in exchange for Webcor's agreement to dismiss its action.

12 12. Webcor rejected DMJV's request based on DMJV's breach of its contractual obligation
13 to pass through Webcor's claims. Webcor further informed counsel for DMJV that it considered
14 DMJV's breach material such that Webcor's further performance of any ADR or dispute provisions was
15 excused. However, Webcor was willing to stipulate to a ninety (90) day extension to allow DMJV the
16 opportunity to pass up Webcor's COR 60 to the GSA for a Contracting Officer's Decision and
17 determine whether a response would be received. Webcor informed DMJV that beyond that, in light of
18 DMJV's breach, Webcor considered the FARs process to be DMJV's own obligation. The stipulation
19 does not waive Webcor's claims of breach of contract. A true and correct copy of the signed stipulation
20 is attached hereto as Exhibit "C".

21 13. On June 13, 2007, DMJV submitted Webcor's certified claim for equitable adjustment
22 related to the rebar congestion and increased finishes requirement and requested a Contracting Officer's
23 Final Decision on the submitted claim within 60 days. Notably, the claim certification DMJV
24 ultimately forwarded to the GSA mirrored the language of Jack Harrington's April 10, 2007
25 certification. A true and correct copy of DMJV's certification is attached hereto as Exhibit "D".

26 14. To date, DMJV has never passed Webcor's CORs 61 through 65 through to the GSA for
27 review. These CORs total \$1,480,277.00.

28

15. In summary, Webcor's complaint can be broken into two components. The first component is claims involving the GSA (COR 60). The second component is claims which do not involve the GSA or the FARS dispute resolution process (CORs 61-65). Given the undisputed evidence before this Court that DMJV failed to timely avail itself and Webcor of the FARS dispute resolution process with respect to COR 60, this motion to stay should be denied in its entirety. Further, since DMJV has admitted that CORs 61-65 do not involve any dispute between DMJV and the GSA, no stay should be ordered with respect to this significant portion of Webcor's claim herein.

I declare under penalty of perjury that the foregoing is true and correct, and that I executed this Declaration on this 3rd day of August, 2007, at Walnut Creek, California.

KENNETH G. JONES

EXHIBIT A



rd T. Bowles	David W. Trotter
Michael P. Verna	Jason J. Granskog
Robert I. Westerfield	Bradley R. Bowles
Richard A. Ergo	Lawrence D. Goldberg
K.P. Dean Harper	William T. Nagle
Mary P. Sullivan	Cathleen S. Huang
Kenneth G. Jones	Michael P. Connolly
Charles S. Goldman	Steven P. McFarlane
Kenneth B. McKenzie	Veronica Ann O. Benigno

March 23, 2007

Via Overnight Delivery

Joel D. Heusinger
Woods & Aitken LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508-2578

Michael Ambroso
Dick Corporation
P.O. Box 10896 *1900 Route 51 South*
Pittsburgh, Pennsylvania 15236 *Large, PA 15025*

Re: Webcor/Dick-Morganti

Dear Mike & Joel:

Enclosed is Webcor's certified claim for an equitable adjustment related to the rebar congestion and increased finishes requirements on the GSA Project No. NCA00049. Demand is hereby made that you submit this claim for a Contracting Officer's decision by no later than April 2, 2007. Please copy me on any transmittal of this claim to the GSA.

Also, by no later than April 2, 2007, please provide us with all bonding and surety information related to this project. Further, please put any bonding company and/or surety for this Project on notice of Webcor's claim herein.

Finally, when we met in December of last year you informed us that we would receive Dick Morganti's position with respect to Webcor's Change Order Nos. 61 - 65 by the end of January 2007. Having received no response, we can only assume that Dick Morganti has no basis for its failure to pay these Change Orders. Consequently, demand is hereby made that Dick Morganti approve and pay for Change Order Nos. 61-65 by no later than April 2, 2007.

Please do not hesitate to call if you have any questions.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'K. Jones', with a stylized flourish at the end.

KENNETH G. JONES

Encl.

*Binder also sent to Ron Brookfield at Dick/Morganti
without letter*

EXHIBIT A

EXHIBIT B

Kenneth G. Jones

From: Kenneth G. Jones
Sent: Wednesday, April 11, 2007 7:24 AM
To: 'Joel D. Heusinger'
Cc: Richard T. Bowles
Subject: RE: Revised Executed Certification

Joel -

Our revised cert complies with the FARS. Adding three words "Dick Morganti AND" does not change the fact that the GSA is liable for the claim and I am aware of no authority that would suggest this revision does not comply with the FARS. Indeed, there are several decisions which have found much less formal wording to be consistent with the FARS.

Kenneth G. Jones

Bowles & Verna, LLP
2121 N. California Blvd., Suite 875
Walnut Creek, California 94596
(925) 935-3300
(925) 935-0371 (fax)

From: Joel D. Heusinger [mailto:JHEUSINGER@woodsaitken.com]
Sent: Wednesday, April 11, 2007 6:55 AM
To: Kenneth G. Jones
Subject: RE: Revised Executed Certification

Ken,

I had passed your request for the bond on to Mike. He was out last week on vacation, but I talked with him again today and he is pulling the bond to send out to you. I also had Sage contact Dan Kass and they are putting together their analysis for D/M to review on the schedule portion and the costs. WJE is doing the same with the material Gene prepared. So I believe that review process is moving forward. I also received your revised certification, unfortunately the Contract Disputes Act requires the certification language I had sent out. That is why I sent the FAR, which is incorporated in the subcontract, with the email. We will need that language changed to mirror the CDA to be able to submit to the GSA as we go forward. Let me know if you need anything else.

Joel

From: Kenneth G. Jones [mailto:KJones@bowlesverna.com]
Sent: Tuesday, April 10, 2007 1:38 PM
To: Joel D. Heusinger
Subject: FW: Revised Executed Certification

Joel -

Attached please find a revised certification for the claim we have asked DMJV to pass through to the GSA. Please note that the only modification we made to the draft cert you sent us is that we have stated that Dick Morganti AND GSA are liable for this claim.

Also, we have yet to receive confirmation that DMJV has put its bonding company on notice of Webcor's claim and we have yet to be provided with the bond information. Please provide this information to me asap.

Finally, our expectation is that, with the revised certification, Webcor's claim will be forwarded to the GSA immediately.

Please do not hesitate to call if you have any questions.

8/3/2007

EXHIBIT B

Kenneth G. Jones

Bowles & Verna, LLP
2121 N. California Blvd., Suite 875
Walnut Creek, California 94596
(925) 935-3300
(925) 935-0371 (fax)

From: Jack Harrington [mailto:jack@webcor.com]
Sent: Tuesday, April 10, 2007 11:28 AM
To: Kenneth G. Jones
Cc: John Bowles
Subject: Revised Executed Certification

Jack Harrington
Project Manager
Webcor Concrete Group
One Rincon Hill Project
450 Harrison St.
San Francisco, CA 94105
T 415-978-1160 F 415-896-2024 www.webcorconcrete.com



8/3/2007

EXHIBIT C

RICHARD T. BOWLES #46234
 KENNETH G. JONES #196868
 BOWLES & VERNA LLP
 2121 N. California Boulevard, Suite 875
 Walnut Creek, California 94596
 Telephone: (925) 935-3300
 Facsimile: (925) 935-0371
 rbowles@bowlesverna.com
 kjones@bowlesverna.com
 Attorneys for Plaintiff
 WEBCOR CONSTRUCTION, INC. dba WEBCOR BUILDERS

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

UNITED STATES of AMERICA for the Use and
 Benefit of WEBCOR CONSTRUCTION, INC.
 dba WEBCOR BUILDERS, and WEBCOR
 CONSTRUCTION, INC. dba WEBCOR
 BUILDERS,

Plaintiffs,

v.

DICK/MORGANTI, a joint venture, DICK
 CORPORATION, THE MORGANTI GROUP,
 AMERICAN CASUALTY COMPANY OF
 READING, PA, NATIONAL UNION FIRE
 INSURANCE COMPANY OF PITTSBURGH,
 PA, and DOES 1 through 10, inclusive,

Defendants.

Case No. C07-2564 CRB

**STIPULATION AND [PROPOSED]
 ORDER TO EXTEND RESPONSE
 DEADLINE**

The parties hereto stipulate that good cause exists to extend the time for all defendants to respond to Webcor's Complaint herein to and including September 17, 2007. The parties herein are currently involved in good faith efforts to resolve this complex construction dispute involving the newly constructed GSA Federal Building in San Francisco. By allowing the defendants herein to have until September 17, 2007 to respond to Webcor's Complaint, significant judicial resources will be

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1 conserved in that defendants may have received a response back from the Owner regarding the items
2 contained in the Complaint.

3 There have been no previous time modifications in this case and the current Case Management
4 Conference is scheduled for August 24, 2007. The parties herein request that this Case Management
5 Conference be rescheduled in November 2007.

6 DATED: June 28, 2007

BOWLES & Verna LLP

7
8 By 

KENNETH G. JONES

Attorneys for Plaintiff Webcor

Construction, Inc. dba Webcor Builders

9
10
11 DATED: June 27, 2007

PECKAR & ABRAMSON, P.C.

12
13 By 

RAYMOND M. BUDDIE

Attorneys for Defendant Dick Morganti,
Dick Corporation, The Morganti Group

14
15
16 DATED: June 27, 2007

PECKAR & ABRAMSON, P.C.

17
18 By 

RAYMOND M. BUDDIE

Attorneys for Defendant American Casualty
Company of Reading, Pennsylvania

19
20
21 DATED: June 27, 2007

PECKAR & ABRAMSON, P.C.

22
23 By 

RAYMOND M. BUDDIE

Attorneys for Defendant National Union
Fire Insurance Company of Pittsburgh,
Pennsylvania

24
25
26
27
28 00236696

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[PROPOSED] ORDER

The Court has considered the Stipulation submitted by the parties, and good cause appearing, it is hereby Ordered that the deadline for all defendants to respond to Webcor's Complaint herein shall be extended to and include September 17, 2007.

It is further ordered that the Case Management Conference scheduled for August 24, 2007 be continued to _____, 2007.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2007

United States District Court Judge
Northern District Court of California

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STIPULATION AND [PROPOSED] ORDER TO EXTEND RESPONSE DEADLINES

PROOF OF SERVICE

USDC Northern District of California, Case No. C07-2564 CRB

I, the undersigned, declare as follows: I am a citizen of the United States, over the age of 18 years, and not a party to, or interested in the within entitled action. I am an employee of BOWLES & VERNA LLP, and my business address is 2121 N. California Blvd., Suite 875, Walnut Creek, California 94596.

On June 28, 2007, I served the following document(s):

STIPULATION AND [PROPOSED] ORDER TO EXTEND RESPONSE DEADLINE

on the following parties in this action addressed as follows:

Raymond M. Buddie
PECKAR & ABRAMSON, P.C.
250 Montgomery Street
16th Floor
San Francisco, CA 94104
tel. +1 415.837.1968
fax +1 415.837.1320

XXX **BY MAIL:** I caused each such envelope, with postage thereon fully paid, to be placed in the United States mail at Walnut Creek, California. I am readily familiar with the business practice for collection and processing of mail in this office. That in the ordinary course of business said document(s) would be deposited with the U.S. Postal Service in Walnut Creek on that same day. I understand that service shall be presumed invalid upon motion of a party served if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained on this affidavit.

 BY PERSONAL SERVICE: I delivered each such envelope by hand to each party addressee above.

 BY OVERNIGHT DELIVERY: I caused each envelope, with delivery fees provided for, to be deposited in a box regularly maintained by UPS/Federal Express. I am readily familiar with Bowles & Verna's practice for collection and processing of correspondence for overnight delivery and know that in the ordinary course of Bowles & Verna's business practice the document(s) described above will be deposited in a box or other facility regularly maintained by UPS/Federal Express or delivered to an authorized courier or driver authorized by UPS/Federal Express to receive documents on the same date that it is placed at Bowles & Verna for collection.

 BY FACSIMILE: By use of facsimile machine number (925) 935-0371, I served a copy of the within document(s) on the above interested parties at the facsimile numbers listed above. The transmission was reported as complete and without error. The transmission report was properly issued by the transmitting facsimile machine.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Executed on June 28, 2007, at Walnut Creek, California.

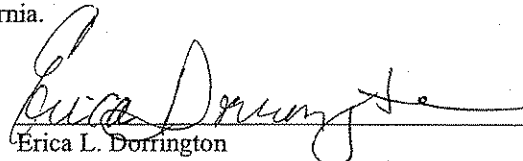

Erica L. Dorrington

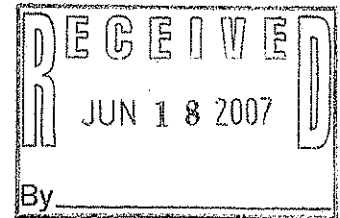
EXHIBIT D



Building Excellence for Over 80 Years!

Michael T. Ambroso
Assistant General Counsel &
Assistant Secretary

June 13, 2007



Shelita Harper
Contracting Officer
General Services Administration
PBS, Property Development Div., 9PCE
450 Golden Gate Ave., 3rd Floor West
San Francisco, CA 94102-3434

RE: San Francisco Federal Office Building
Contract No. GS-09P-02-KTC-0002
Claim Under Contract Disputes Act

Dear Ms. Harper:

Dick/Morganti, A Joint Venture, on behalf of one of its subcontractors (Webcor Construction, Inc.), hereby submits a claim pursuant to the Contract Disputes Act, 41 U.S.C. Section 601, et seq. The explanation of the entitlement for this claim, as well as an identification of Webcor's claimed damages, are contained in the attached binder (two copies attached). Please note that Dick/Morganti's signed Certification for this Claim is attached to this letter.

The attached claim requests compensation for the damages incurred by Webcor as a result of the rebar congestion and additional concrete finish requirements on this Project. Please note, however, that Dick/Morganti and other subcontractors also incurred delays and additional costs as a result of these problems for which we believe the GSA is responsible. Dick/Morganti reserves the right to submit claims for additional compensation, on behalf of itself and its other subcontractors, arising out of these and other events on the Project. These other claims will be submitted as soon as possible.

Dick/Morganti respectfully requests a Contracting Officer's Final Decision on this submitted claim within sixty (60) days, as specified in the Contract Disputes Act.

EXHIBIT D



Shelita Harper
Contracting Officer
General Services Administration
June 13, 2007
Page 2

Please contact the undersigned with any questions.

Sincerely,

DICK CORPORATION

A handwritten signature in black ink, reading "Michael T. Ambroso". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael T. Ambroso

MTA/lsn
enclosure

cc: Bill Higgins (w/o enclosure)
Joel Heusinger, Esq. (w/o enclosure)
/ Ken Jones, Esq. (w/o enclosure)
Vince Petito (w/o enclosure)

CLAIM CERTIFICATION

DICK/MORGANTI, A JOINT VENTURE

UNITED STATES FEDERAL OFFICE BUILDING

SAN FRANCISCO, CALIFORNIA

GSA Contract No. GS-09P-02-KTC-0002

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

SIGNATURE

NAME

TITLE

DATE

William L. Higgins
WILLIAM L. HIGGINS
EXEC. V. PRES & COO
6/13/07